

## SERGEANT ROBERT WUTTKE

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1 monitoring sick time for your subordinates, so  
2 people that you were supervising. Did the email  
3 discuss how you were supposed to go about monitoring  
4 that sick time?

5 A. I corrected myself when I said  
6 "monitoring." Evaluate. Because it was -- it was  
7 to check to see if people were in violation as  
8 opposed to people were going to be in violation.

9 Q. And do you know when the email was issued?

10 A. I don't remember, off the top of my head.

11 Q. Was it in between February and April of  
12 2014?

13 A. I believe so.

14 Q. And once you received the email, what  
15 steps did you take to be in compliance with the  
16 email?

17 A. I took my list of people that were  
18 officers that were assigned to me, and I checked  
19 their sick time in the AS400 system.

20 Q. And what information did you learn?

21 A. That Officer Bovell was in violation of  
22 the chronic absentee policy.

23 Q. So when you check your -- the people that  
24 you are supervising, when you check their sick time

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1 in the AS400 system, how do you do that? What  
2 information do you put in? Is that a database only  
3 for sick time and leave?

4 A. No. The AS400 system was our entire  
5 records management system at the time.

6 Q. What type of information did that --

7 A. It had sick time. It had personal time.  
8 It had personal information. It had suspect  
9 information. Every person that had had a  
10 complaint -- a police report written for them or  
11 police report with their name or if their name was  
12 contained in it or -- it was the entire record  
13 management system for the department. All our logs  
14 were in there. Detective cases were in there.

15 Q. So there was information on the police and  
16 suspects?

17 A. Yes, ma'am.

18 Q. And then could you run an arrest  
19 productivity report from the AS400?

20 A. Could I? Yes.

21 Q. And is that something that you did in  
22 connection with your performance evaluations of all  
23 the people that you were supervising at that time?

24 A. No, ma'am.

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1 Q. You had testified that productivity was a  
2 criterion to consider when you were doing the  
3 evaluations; is that accurate?

4 A. Yes, ma'am.

5 Q. And so -- but just to be clear, you did  
6 not run any productivity reports in connection with  
7 performance of -- in connection with your  
8 evaluation?

9 MR. SWEENEY: He did not, personally?

10 A. No. I did not personally do it.

11 Q. Okay. But you have -- you could have done  
12 it personally; is that correct? In other words --

13 A. I don't know if I could do summonses. I  
14 can do arrests. I don't know if I can check  
15 summonses.

16 Q. Okay. What can you access, personally, at  
17 that point in time, through the AS400 system?

18 A. At that particular time, sick time,  
19 vacation time, roll calls, arrest records.

20 Q. That would be productivity?

21 A. No. That would be arrest records.

22 Q. Let's just talk about employees then. So  
23 in connection with employees --

24 A. Okay.

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1 Q. -- not suspects --

2 A. The arrest production of an officer.

3 Q. Okay. That's something you could have  
4 checked?

5 A. Yes.

6 Q. And could you also check the number of  
7 warrants that individual had executed?

8 A. No.

9 Q. The number of reports they wrote?

10 A. No.

11 Q. The reports are in there, but you can't  
12 run a report on -- a report written by a specific  
13 person?

14 A. I don't know how or I don't know if there  
15 is a way to run a query by the officer who wrote the  
16 report.

17 Q. So how did you go about looking into the  
18 sick time in the AS400 system on the people that you  
19 were supervising?

20 A. I went to the illness reporting section of  
21 it and typed in the officer's unique ID number and  
22 looked at it.

23 Q. And where is the unique ID number obtained  
24 from?



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1           A.    The sheet that has all the unique ID  
2 numbers on it.

3           Q.    Okay. So you have that as a supervisor?

4           A.    Everybody has it. It's posted at the  
5 front desk.

6           Q.    Okay. So is that a badge number?

7           A.    No.

8           Q.    Okay. So you did a sick time check for  
9 all the people you supervised?

10          A.    Yes, ma'am.

11          Q.    And did you keep a log or print out any  
12 information, or did you just view it on the screen?

13          A.    Viewed it on the screen.

14          Q.    And aside from Officer Bovell, were any of  
15 the other individuals that you were supervising at  
16 that time in violation of the sick time policy?

17          A.    No, ma'am.

18          Q.    He was the only one?

19          A.    Yes, ma'am.

20          Q.    And are there different sections in  
21 chronic absence rules and regulations -- that's  
22 fine -- in the sick time, you know, rules and  
23 regulations, are there different manners in which an  
24 employee could violate that policy?

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1 A. Yes.

2 Q. And what policy or what portion of that  
3 policy did Officer Bovell violate?

4 A. Three absences in a six-month period that  
5 occur only on the first or last day of the member's  
6 workweek and/or Saturdays, Sundays, or holidays.

7 Q. And how did he -- and what section is  
8 that?

9 A. Section 1, Subs A and B.

10 Q. So two sections? It involved two  
11 sections, A and B?

12 A. No. Just the two -- the two criteria for  
13 Subsection A.

14 Q. And how did you -- and as you sat there  
15 and viewed his sick time information in the AS400  
16 system, was it apparent to you, looking at the  
17 information, that he violated the sick time policy?

18 A. Just by looking at it on the screen, no,  
19 ma'am.

20 Q. Okay. What steps did you take -- did you  
21 print out the information for yourself so you  
22 could -- or did you write it down somewhere?

23 A. I printed it out.

24 Q. Did you keep it in a file or in your

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1 records anywhere?

2 A. Yes, ma'am.

3 Q. What's the next step that you took?

4 A. Checked to see if the days that he was  
5 sick were first day, last day, or holidays.

6 Q. And at the time that you are doing this,  
7 is there any way for you to know whether he had, in  
8 the past, violated any sick leave policies?

9 A. Yes.

10 Q. And did you check to see whether he was in  
11 compliance in the past or had been a sick -- chronic  
12 sick leave abuser?

13 A. I'm not sure I understand.

14 Q. So aside from -- I'm assuming that the  
15 violations were -- the absentee policy was between  
16 January and April of 2014.

17 A. That would be a six-month period. So --

18 Q. Oh, so you looked before? So you brought  
19 up --

20 A. I would have to, in order to properly  
21 evaluate.

22 Q. Do you know what time frame you searched?

23 A. It would be a six-month period from the  
24 day I searched it.

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1 Q. What would be the day you searched it?

2 A. I would have to see my report.

3 Q. At the time that you were gathering this  
4 information, did you check to see whether Officer  
5 Bovell, in the past, had been found to be a sick  
6 leave abuser or in violation of the sick leave  
7 policy?

8 A. No.

9 Q. Was it your understanding that you had any  
10 discretion with respect to whether you recorded or  
11 how you dealt with your findings as the result of  
12 the information you got on Officer Bovell?

13 A. No.

14 Q. You felt as if you had no discretion and  
15 you needed to move forward with your --

16 A. The email very clearly states, "If members  
17 are found in violation, supervisors shall submit an  
18 MV93."

19 Q. So I will show you Plaintiff's Exhibit 15,  
20 which is the MV93 supervisor's report. It's Bates  
21 stamped 150 through 151, two pages. Is that the  
22 report that you completed?

23 A. Yes, ma'am.

24 Q. And to whom did you submit that report?

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1 A. Captain Hastings.

2 Q. What if any -- withdrawn.

3 What did you learn when you went to look  
4 at the schedule for Officer Bovell during the time  
5 period where he was absent?

6 A. He was absent three times.

7 Q. In what time period?

8 A. That would have been -- worked on --  
9 March 29th of 2014 -- so between March of 2014 and  
10 November of 2013, if that's six months. November,  
11 December, January, February, March -- or October of  
12 2013.

13 Q. October of 2014?

14 A. '13.

15 Q. '13. Sorry. He was absent three times  
16 between October and March?

17 A. Actually, if -- now that I'm reviewing my  
18 report, it actually says he was absent three times  
19 between January 1st of 2014 and March of 2014.

20 Q. But your investigation went all the way  
21 back to October?

22 A. If the criteria says six months, I would  
23 go back six months.

24 Q. So the only -- so between October and --

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1 2013 and January 2014, that would mean he had no  
2 absences?

3 MR. SWEENEY: Objection as to form.

4 A. Could you repeat. I was reading that.

5 Q. Yeah. Sorry. Is it the case that you ran  
6 the -- the time period in which you were searching  
7 for absences was October 2013 through March of 2014?

8 A. I believe so, yes.

9 Q. Six months?

10 A. Yes. Six months.

11 Q. And that the only absences during that  
12 time period of six months consisted of three  
13 absences in January of 2014?

14 A. No, ma'am.

15 Q. Okay. So can you just tell me how many  
16 absences there were.

17 A. I don't know.

18 Q. Oh. Well, can you tell me what  
19 information you have that lead you to believe he was  
20 in violation of the --

21 A. He was sick -- called out sick from work  
22 on January 22nd of 2014, February 3rd of 2014, and  
23 March 23rd of 2014. A total of three times.  
24 January 22nd was his first tour of duty for the

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1 week. February 3rd was his first tour of duty for  
2 the week. And March 23rd was his last tour of duty  
3 for the week.

4 Q. So the inference would be that he was  
5 tacking on -- or that someone who was taking  
6 absence -- an absence either on their first or their  
7 last tour was tacking on an extra day from their  
8 time off? Is that --

9 A. That's what I would believe -- what they  
10 would be pointing at there.

11 Q. Do you know if Officer Bovell had any  
12 doctors' notes in connection with the absences in  
13 January -- on January 22nd, February 3rd, or  
14 March 23rd?

15 A. No, ma'am.

16 Q. Do you know if that was something Captain  
17 Hastings had looked into when the decision was made  
18 to discipline Officer Bovell?

19 MR. SWEENEY: Object to the form. You can  
20 answer.

21 A. I don't believe Officer Bovell was  
22 disciplined.

23 Q. Was he written up for a violation of the  
24 sick time policy?

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1 A. Yes.

2 Q. What's the definition in the department of  
3 discipline?

4 A. I don't know that there's a written  
5 definition of discipline in our department manual.

6 Q. Well, if Officer Bovell received a  
7 write-up -- he did receive a write-up; correct?

8 A. Supervisor's report was completed.

9 Q. Other than the supervisor's report, was  
10 there any other piece of paper that was generated as  
11 a result of this violation of the sick leave policy?

12 A. I don't know.

13 Q. All right. And you testified that you  
14 don't know if Captain Hastings looked into whether  
15 there were valid doctors' notes?

16 A. I don't know what he did.

17 Q. And what was the date of your report?

18 A. March 29th, 2014.

19 Q. And other than inform Captain Hastings,  
20 did you make any recommendations with respect to how  
21 the situation should be dealt with or what  
22 consequences Officer Bovell should face as a result  
23 of the violation?

24 A. Yes, ma'am.



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1 Q. And what was that?

2 A. That I didn't feel he was abusing the sick  
3 time. I think he technically met the criteria for  
4 chronic sick. However, I didn't feel that it was an  
5 abuse. And my recommendation was to allow him and  
6 continue to monitor his time to make sure that my  
7 conclusion was correct and no form of disciplinary  
8 action should be taken.

9 Q. And was that followed by Captain Hastings?

10 A. I have no idea. Once it gets out of my  
11 hands and goes up the chain of command, it doesn't  
12 come back down.

13 Q. I'm going to show you what's marked as  
14 Plaintiff's -- I will take that -- Exhibit 17, which  
15 is Bates stamped 087, 088, and 089, the second and  
16 third pages being a portion of an MV5 report. So  
17 just take a moment to look that over. Have you seen  
18 that MV5 report?

19 A. Yes, ma'am.

20 Q. And in what connection have you seen that?

21 A. It was emailed to me.

22 Q. By whom?

23 A. If I remember correct, Officer Bovell.

24 Q. And what was the substance or subject

1 matter of the document?

2 A. He feels he is being unfairly  
3 discriminated against, if I -- or he was receiving  
4 unfair treatment.

5 Q. Based on what, if you can recall?

6 A. I would have to read it over again.

7 Q. Yeah. Just take a moment to refresh your  
8 recollection.

9 A. Essentially, he's saying that he felt like  
10 he was being targeted and unfairly disciplined  
11 because he had called out sick, because somebody had  
12 personal resentment towards him --

13 Q. But in connection with what, in connection  
14 with the chronic sick investigation?

15 A. If I am reading this correctly, I believe  
16 it all starts with the day that he called out sick,  
17 and Lieutenant Curzio contacted him and said the  
18 captain was mad at him.

19 Q. And did you have any personal involvement  
20 in -- were you working that day, do you know?

21 A. According to this, I was.

22 Q. Do you have an independent recollection of  
23 those events being brought to your attention then,  
24 as you were working?

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1           A.    No.  I believe I took the sick report I  
2   was working before -- prior to Officer Bovell's --  
3   yeah.  I was working the desk on the day tour on the  
4   23rd, which was the day that -- later on in the  
5   evening, Lieutenant Curzio called him and said the  
6   captain's mad at him.

7           Q.    And had Officer Bovell reported to work  
8   that day and just left early, or did he call out for  
9   the entire shift?

10          A.    Called out for the entire shift.

11          Q.    And do you know whether there was any  
12   investigation into Officer Bovell's concerns?

13          A.    I have no clue.

14          Q.    I will take that back.  Did you direct him  
15   to complete the MV5 that is in Exhibit 17?

16          A.    No, ma'am.

17          Q.    Going to show you exhibit -- Plaintiff's  
18   Exhibit 19, which is Bates stamp 0148, which appears  
19   to be an email from Captain Hastings.

20          A.    Okay.

21          Q.    Is that the email that you were referring  
22   to before?

23          A.    Yes.  Several -- yes.

24          Q.    I will take that back.  And so the top

1 portion of this document indicates a review of the  
2 department sick records shows that several members  
3 meet the requirements under the chronic sick policy.  
4 Did you have any conversation, either with Captain  
5 Hastings or -- I don't know what his title is at  
6 this point -- Dumser, is he lieutenant?

7 A. Deputy chief.

8 Q. Deputy chief. Or anyone else with respect  
9 to whether any investigation had been conducted to  
10 this email being sent out to the patrol sergeants?

11 A. I didn't have any conversation with  
12 anybody regarding any investigation that may have  
13 done -- been done prior.

14 Q. So can we agree that the first sentence  
15 appears that there had already been a review  
16 conducted, indicating that there were people who  
17 were in violation of the sick policy?

18 A. I can agree to that, yes.

19 Q. And I'm going to show you what's been  
20 marked as Plaintiff's Exhibit 16. Do you recognize  
21 what that document is?

22 A. That looks like a sick report.

23 Q. And would that -- does that have a  
24 specific time period on it, a time frame?

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1           A.    First date is 11/19 -- excuse me --  
2   11/19/2008, and the last one is March 23, 2014.

3           Q.    And is that for Officer Bovell?

4           A.    Yes.

5           Q.    And so between 2008 and 2014, is there an  
6   indication on how many sick days Officer Bovell had  
7   taken?

8           A.    Yes.

9           Q.    And what is that number?

10          A.    22.

11          Q.    And I will show you what's been marked as  
12   Plaintiff's Exhibit 20. Do you recognize that  
13   document?

14          A.    I -- actually, I recognize the document.  
15   However, I have never seen this one.

16          Q.    Do you recognize the document in its  
17   format but not in substance?

18          A.    Yes, ma'am.

19          Q.    And just reviewing that document, does it  
20   indicate whether your recommendation with respect to  
21   Officer Bovell's sick time and your report that he  
22   was in violation of the sick time procedures -- that  
23   your recommendations were followed by the  
24   administration?

1 A. Yes.

2 Q. Okay. So getting to his evaluation,  
3 Officer Bovell's evaluation in April of 2014,  
4 specifically, what steps did you take to gather  
5 information that would be used in evaluating his  
6 performance, if any? And what information did you  
7 consider?

8 A. I looked at the -- I spoke to Lieutenant  
9 Gallagher and Sergeant Scott and asked if they knew  
10 of any complaints, either official, unofficial  
11 regarding Officer Bovell, and I contacted Lisa Hill  
12 from the support services division for summons  
13 productivity and arrest productivity.

14 Q. All right. When you contacted Lisa  
15 Hill -- what's her position?

16 A. She's a civilian computer -- I don't know  
17 what her title is. Civilian that works on our  
18 computers.

19 Q. And she's in what department?

20 A. Support services.

21 Q. Is that located in the same building?

22 A. Yes, ma'am.

23 Q. And where, if you know, would she have all  
24 the information on summonses and arrests for Officer

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1     Bovell?

2             A.     I think it's the AS400.

3             Q.     And considering the testimony earlier that  
4     you had the ability to get that information from the  
5     AS400 system on your own, why would you have gone to  
6     Lisa Hill?

7                     MR. SWEENEY:  Objection to the form.  I  
8     don't think that's his testimony, but you can  
9     answer.

10            Q.     So withdrawn.

11                    So we talked about the type of information  
12    that was in the AS400.  And just narrowing that  
13    information specifically to exclude suspects and  
14    only include employees, was it your testimony that  
15    you had the ability to gather productivity  
16    information or productivity reports, connections  
17    with arrests made, and summonses issued?

18            A.     No, it was not.

19            Q.     Okay.  So what ability did you have in  
20    that connection?

21            A.     To check arrest productivity.  However, I  
22    had no idea how to do summons or citation  
23    productivity.

24            Q.     Okay.  And Lisa Hill did; correct?

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1 A. Yes.

2 Q. But did you at least -- since you had the  
3 ability and knowledge to do so -- run the arrest  
4 productivity --

5 A. No.

6 Q. -- through the AS400?

7 A. No, I did not.

8 Q. How did you contact Lisa Hill in  
9 connection with gathering this information?

10 A. Email.

11 Q. And do you have a copy of the email that  
12 you sent to Lisa Hill?

13 A. Yes, I believe I do.

14 MS. BELLANTONI: I'm going to ask that you  
15 please provide that to Mr. Sweeney.

16  
17 DOCUMENT/INFORMATION REQUESTED:  
18

19 Q. And do you remember when, approximately,  
20 in relation to April of 2014 you sent the email to  
21 Lisa Hill?

22 A. April of 2014. I don't know the date.

23 Q. And, in substance, what did you request  
24 from her?



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1           A.     In substance, I gave her the list of  
2 people -- officers under my supervision and said,  
3 Can you please get me the summons productivity and  
4 arrest numbers for these officers.

5           Q.     Did you indicate when you needed the  
6 information by?

7           A.     No.

8           Q.     Did the email contain a request for any  
9 other type of information?

10          A.     I'm sorry. May I backtrack for one  
11 second.

12          Q.     Yes.

13          A.     I gave a time frame as well.

14          Q.     Oh, okay. What was the time frame?

15          A.     February -- I'm sorry. April 1st, 2013,  
16 through -- through March 31st of 2014. It's a  
17 yearly evaluation.

18          Q.     Did that email request any other  
19 information from Lisa Hill?

20          A.     Yes.

21          Q.     What?

22          A.     Information from my partner.

23          Q.     And what was that?

24          A.     Same information on different officers.

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1 Q. Did that email request any other  
2 information?

3 A. No.

4 Q. And who was your partner at the time?

5 A. Robert Scott.

6 Q. And did you CC Robert Scott on your email?

7 A. I don't know.

8 Q. Okay. Did you receive a response email  
9 from Lisa Hill?

10 A. Yes, I did.

11 MS. BELLANTONI: And I'm going to ask that  
12 you provide that to Mr. Sweeney as well.

13 THE WITNESS: Yes, ma'am.

14  
15 DOCUMENT/INFORMATION REQUESTED:  
16

17 Q. And, in substance, what was the response?

18 A. A bunch of numbers with names.

19 Q. And between the time that you received  
20 that response, did Lisa Hill respond by email or any  
21 other manner that she acknowledged having received  
22 your first email?

23 A. I don't recall getting one, no.

24 Q. And you have a copy of the email that

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1 listed the information that you had requested from  
2 Lisa Hill?

3 A. Yes, ma'am.

4 MS. BELLANTONI: And I will ask that you  
5 please provide a copy of that to Mr. Sweeney.

6  
7 DOCUMENT/INFORMATION REQUESTED:  
8

9 Q. The information that you received from  
10 Lisa Hill, can you recall -- in substance, was it  
11 broken down by summonses and arrests per individual  
12 under your command and under --

13 A. Sergeant Scott.

14 Q. -- Sergeant Scott's command?

15 A. Yes, ma'am. So a grid, for lack of a  
16 better term, farthest from the left was the  
17 officer's name, and then there was columns for  
18 parking summonses, moving violations, violations of  
19 city ordinances, and arrests.

20 Q. And as you sit here, can you recall what  
21 Officer Bovell's productivity was?

22 A. I can't recall, off the top of my head,  
23 no. It was not -- the initial email I got was not a  
24 lot.

1 Q. Was it less than five arrests? Are we  
2 talking about not a lot of summonses or not a lot of  
3 arrests?

4 A. We're talking about productivity in all  
5 categories, productivity of parking summonses,  
6 moving violations, violations of city ordinances,  
7 and arrests.

8 Q. And is that information that you were  
9 provided with broken down by dispatched arrests and  
10 undispached arrests?

11 A. No, ma'am.

12 Q. Did you ask Lisa to break down that  
13 information by dispatched and undispached arrests?

14 A. No, ma'am.

15 Q. Was Officer Bovell serving, at that time  
16 period, in April of 2014, as a field training  
17 officer?

18 A. Yes, ma'am.

19 Q. And who was he supervising?

20 A. He wasn't supervising anybody.

21 Q. Who was he the field training officer for?

22 A. I don't remember, off the top of my head.

23 Q. And would the statistics and productivity  
24 numbers for whoever he was the field training

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1 officer for be taken into consideration in  
2 connection with his evaluation? In other words, if  
3 an arrest -- I don't know -- if an arrest was made  
4 and your person that you are training in the field  
5 makes the arrest, and you don't get credit or you  
6 don't get -- it's not added to your productivity  
7 report, do you get credit for the other person that  
8 you are -- I know you are not supervising them, but  
9 that you are training?

10 A. No.

11 Q. Is there ever a case where that person  
12 gets -- gets, I guess, a credit or numbers, and you,  
13 as the field training officer, do not? Or are they  
14 both provided with productivity for that arrest?

15 A. In the AS400 system, only one officer can  
16 be listed as the arresting officer. So, thus, only  
17 one officer can get credit for the arrest.

18 Q. And is there any written or unwritten rule  
19 with respect to the field training officer and the  
20 other officer as to who would take the credit or the  
21 number for that arrest?

22 A. There's nothing written. As a former  
23 field training officer, my understanding of it was  
24 always that you let the rookie do as much as

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1 possible as quickly as possible, because your field  
2 training is going to be over before you know it, and  
3 they're going to be out on the road by themselves.

4 Q. And did you later -- well, did you later  
5 learn that any of the arrests that had been made by  
6 the person Officer Bovell was the field training  
7 officer for had arrests, but those arrests were not  
8 reflected in Officer Bovell's productivity?

9 A. I'm confused by your question.

10 Q. In other words, if he's the field training  
11 officer for another person, and they are highly  
12 productive, but he's not, during that time period,  
13 taking any credit for the arrests, he may look as  
14 if, on paper, he is not being productive at all.

15 A. Correct.

16 Q. Does that take any consideration, or is  
17 that later something that was discovered by you?

18 A. Later on, it was discovered, yes.

19 Q. All right. So aside from the email that  
20 you had sent to Lisa Hill and the response, did you  
21 ever personally go to Lisa Hill and have a  
22 conversation prior to performing the evaluation for  
23 Officer Bovell?

24 A. No.

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1 Q. And what about after performing the  
2 evaluation for Officer Bovell?

3 A. Yes.

4 Q. Did you meet with Officer Bovell before  
5 drafting the written evaluation?

6 A. In what regards?

7 Q. Did you sit down with him and talk about  
8 the year or, you know, what he had done over the  
9 year other than what he had done during the two  
10 months you had supervised him?

11 A. No, ma'am.

12 Q. Did you have conversation with any of the  
13 individuals that you had evaluated before actually  
14 writing down your comments on the performance  
15 evaluation?

16 A. No, ma'am.

17 Q. Was there any suggestion or requirement  
18 that you meet with them before completing their  
19 written evaluation?

20 A. No, ma'am.

21 Q. And what is the policy or -- I know it's  
22 not policy -- procedure, or what were you instructed  
23 by Lieutenant Gallagher on in connection with  
24 issuing week performance evaluation -- in other

1 words, to sit down with these individuals as their  
2 supervisor and go over the evaluation so you can  
3 identify their strengths and weaknesses with them?  
4 Or how do they get a copy of their evaluation?

5 A. They are not issued a copy of it. When  
6 the evaluation is completed, the officers have the  
7 responsibility -- the supervisor -- I'm sorry -- the  
8 supervisor has the responsibility of making sure  
9 that they get together with each individual officer  
10 so that they can review their evaluation and discuss  
11 if there was any questions or concerns. And that is  
12 when the appeal process would start, if there was a  
13 concern.

14 Q. And we can both agree that, as a  
15 supervisor, it's -- it's -- there's no downside to  
16 meeting with the people that you are supervising and  
17 going over your evaluation of them and seeing how,  
18 you know, they could perform better or, possibly,  
19 you know, compliment them on their performance;  
20 correct?

21 A. Yes, ma'am.

22 Q. Were you able -- withdrawn.

23 When you had completed Officer Bovell's  
24 performance evaluation, did you sit down with him



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1 and go over your evaluation?

2 A. No, ma'am.

3 Q. Why?

4 A. I believe, by the time he and I were going  
5 to cross paths again, I was on vacation, and I asked  
6 that my partner, Rob Scott, take care of it for me,  
7 because I wasn't going to be around, and we wanted  
8 to get our evaluations in in a timely -- in a timely  
9 manner.

10 Q. Is there a deadline for getting your  
11 evaluations in?

12 A. Yes, ma'am.

13 Q. And in order to submit your evaluations,  
14 is there a signature required from the officer  
15 that's being evaluated?

16 A. Yes, ma'am.

17 Q. So that's part of completing the process?

18 A. Yes, ma'am.

19 Q. What was the deadline for turning in or  
20 submitting the evaluations?

21 A. I don't remember.

22 Q. Isn't it the same day or date, similar,  
23 every year?

24 A. It's not the same day every year, no.

1 Q. The same date? It can be like a Thursday  
2 in the second week in April --

3 A. It's not.

4 Q. All right. When did you take vacation in  
5 April of 2014?

6 A. I really don't remember. I just remember  
7 that I was going -- let me rephrase. I wasn't going  
8 to be at work in the time frame that Officer Bovell  
9 and I were going to cross paths. Whether I was on  
10 vacation or just took a personal day, as I testified  
11 earlier, I never saw him more than two days a  
12 week -- more than one or two days every three weeks.  
13 I don't want to say that I was on vacation and just  
14 realize that I had just taken a personal day.

15 Q. And so was it your recollection that you  
16 were not at work for longer than one day?

17 A. I don't remember.

18 Q. Would you remember if you had been out of  
19 work in April of 2014 for seven days?

20 A. I take my vacation whenever I can, and  
21 it's not always the same every year. I try and take  
22 the vacation in the spring, summer, and winter. It  
23 is very possible that I was going on vacation. It's  
24 also very possible that I took a personal day. I

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1 could find out for sure whether I was on vacation or  
2 not, but I would need to check with personnel.

3 Q. Did you complete all of the personnel  
4 evaluations for your -- I'm going to call them your  
5 people -- that you are supervising at or around the  
6 same time? In other words, did you give yourself a  
7 deadline and push in in between when you finished  
8 and when you had to turn them in so that you could  
9 meet with them?

10 A. I don't know that I gave myself a  
11 deadline. I tried to complete them all, you know,  
12 within a week.

13 Q. Other than Officer Bovell, did Sergeant  
14 Scott meet with any of your other people that you  
15 supervised to go over their evaluations?

16 A. I don't remember. There may have been one  
17 other one.

18 Q. Is there anything that would refresh your  
19 recollection?

20 A. I would have to see my evaluations from  
21 that year.

22 Q. All right. I'm going to show you  
23 Plaintiff's Exhibit 22, which is Bates stamped 084,  
24 085, and 086. Can you just describe what that is?

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SERGEANT ROBERT WUTTKE

1           A.     This is the personnel performance  
2 evaluation appeal. This would be the form that an  
3 officer would fill out after reading their  
4 evaluation, if they felt that they wanted to appeal.

5           Q.     And that's the first page; correct?

6           A.     Yes, ma'am.

7           Q.     And what about the two pages behind it?

8           A.     This is the personnel violation.

9           Q.     And in considering officer -- or in  
10 creating Officer Bovell's evaluation, had you  
11 reviewed any prior evaluations that had been  
12 conducted for him?

13          A.     We don't have access to that.

14          MS. BELLANTONI: Off the record.

15  
16                   (Time noted: 4:28 p.m.)  
17  
18  
19  
20  
21  
22  
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24

1 STATE OF NEW YORK )

2 ss:

3 COUNTY OF )

4  
5  
6 I, SERGEANT ROBERT WUTTKE, hereby certify  
7 that I have read the pages of the foregoing testimony  
8 of this deposition and hereby certify it to be a true  
9 and correct record.

10  
11  
12  
13  
14 -----  
15 SERGEANT ROBERT WUTTKE  
16  
17  
18

19 Sworn to before me this  
20 \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

21  
22  
23 \_\_\_\_\_  
24 Notary Public

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REQUESTED:	148:17
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DOCUMENT/INFORMATION	
REQUESTED:	151:7
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PHOTOCOPY OF PERSONNEL ORDER,	
was marked for identification:	4:1
Plaintiff's Exhibit 14,	
COMPENSATORY TIME REQUEST,	
was marked for identification:	4:5

1 Plaintiff's Exhibit 15,  
2 SUPERVISOR'S REPORT,  
3 was marked for identification: 4:8  
4

5 Plaintiff's Exhibit 16,  
6 LIST OF DAYS OFF,  
7 was marked for identification: 4:11  
8

9 Plaintiff's Exhibit 17,  
10 3/31/14 EMAIL,  
11 was marked for identification: 4:14  
12

13 Plaintiff's Exhibit 18,  
14 ADMINISTRATIVE GUIDE,  
15 was marked for identification: 4:17  
16

17 Plaintiff's Exhibit 19,  
18 3/27/14 EMAIL,  
19 was marked for identification: 4:20  
20

21 Plaintiff's Exhibit 20,  
22 OFFICE OF THE POLICE  
23 COMMISSIONER DOCUMENT,  
24 was marked for identification: 5:1

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1 Plaintiff's Exhibit 21,  
2 TYPEWRITTEN LETTER,  
3 was marked for identification: 5:5  
4

5 Plaintiff's Exhibit 22,  
6 PERFORMANCE EVALUATION FORM,  
7 was marked for identification: 5:8  
8

9 Plaintiff's Exhibit 23,  
10 PRINTOUT OF COMPUTER SCREEN,  
11 was marked for identification: 5:12  
12

13 Plaintiff's Exhibit 24,  
14 PRINTOUT OF COMPUTER SCREEN,  
15 was marked for identification: 5:16  
16

17 Plaintiff's Exhibit 25,  
18 PRINTOUT OF COMPUTER SCREEN,  
19 was marked for identification: 5:20  
20

21 Plaintiff's Exhibit 26,  
22 HANDWRITTEN NOTES,  
23 were marked for identification: 6:1  
24



1 Plaintiff's Exhibit 27,  
2 PERFORMANCE EVALUATION,  
3 was marked for identification: 6:4  
4

5 Plaintiff's Exhibit 28,  
6 AMENDED EVALUATION,  
7 was marked for identification: 6:8  
8

9 Plaintiff's Exhibit 29,  
10 PERFORMANCE EVALUATION,  
11 was marked for identification: 6:12  
12

13 Plaintiff's Exhibit 30,  
14 CODE OF CONDUCT DOCUMENT,  
15 was marked for identification: 6:16  
16

17 Plaintiff's Exhibit 31,  
18 HARASSMENT COMPLAINT FORM,  
19 was marked for identification: 6:19  
20

21 Plaintiff's Exhibit 32,  
22 PRINTOUT OF TEXT MESSAGES,  
23 was marked for identification: 7:1  
24

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1 Plaintiff's Exhibit 33,  
2 CHARGE OF DISCRIMINATION DOCUMENT,  
3 was marked for identification:

7:4

4  
5 (ALL EXHIBITS RETAINED BY AMY L. BELLANTONI, ESQ.)  
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## C E R T I F I C A T I O N

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF WESTCHESTER )

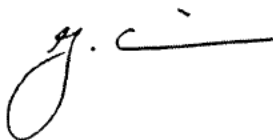
I, GABRIEL ALICEA, Court Reporter and  
Notary Public within and for the County of Rockland,  
State of New York, do hereby certify:

That I reported the proceedings that are  
hereinbefore set forth, and that such transcript is  
a true and accurate record of said proceedings.

I further certify that the witness does  
not request to review the transcript;

AND, I further certify that I am not  
related to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand.



GABRIEL ALICEA

Court Reporter

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1 ERRATA SHEET

2 Deposition of: SERGEANT ROBERT WUTTKE

3 Re: MURASHEA "MIKE" BOVELL vs. CITY OF MOUNT

4 VERNON, et al.

5 Date Taken: November 4, 2016

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19 \_\_\_\_\_  
20 (Signature)

21 Sworn to before me this

22 \_\_ day of \_\_\_\_\_, 2016.

23 \_\_\_\_\_  
24 Notary Public  
25

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SERGEANT ROBERT WUTTKE  
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SERGEANT ROBERT WUTTKE  
November 4, 2016

MURASHEA MIKE BOVELL v.  
CITY OF MOUNT VERNON, New York, et al.

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - -X

MURASHEA "MIKE" BOVELL,

Plaintiff,

-against-

Case No.:

15 Civ. 8594

CITY OF MOUNT VERNON, New York,  
Commissioner TERRANCE RAYNOR,  
Individually and in his Official  
Capacity, Deputy Commissioner  
RICHARD BURKE, Individually and  
in his Official Capacity,  
Captain MICHAEL GOLDMAN, Individually  
and in his Official Capacity,  
Sergeant ROBERT WUTTKE, and Lieutenant  
PAUL NAWROCKI, Individually and in his  
Official Capacity,

Defendants.

- - - - -X

November 10, 2016

10:20 a.m.

CONTINUED DEPOSITION of ROBERT WUTTKE, a Defendant  
herein, taken pursuant to Notice, and held at Mount  
Vernon City Hall, 1 Roosevelt Square, Mount Vernon,  
New York, before Gabriel Alicea, a Court Reporter  
and Notary Public of the State of New York.

1     A P P E A R A N C E S:

2  
3           THE BELLANTONI LAW FIRM

4                 Attorneys for Plaintiff

5                 2 Overhill Road, Suite 400

6                 Scarsdale, New York 10583

7     BY:   AMY L. BELLANTONI, ESQ.

8  
9           COUGHLIN & GERHART, LLP

10                Attorneys for Defendants

11                99 Corporate Drive

12                Binghamton, New York 13904

13     BY:   PAUL J. SWEENEY, ESQ.

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19  
20     ALSO PRESENT:

21                Police Officer Murashea Bovell

22                Det. Alec Francis



ROBERT WUTTKE

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1           IT IS HEREBY STIPULATED AND AGREED by and  
2 between the attorneys for the respective parties  
3 herein, that filing and sealing be and the same are  
4 hereby waived.

5           IT IS FURTHER STIPULATED AND AGREED that all  
6 objections, except as to the form of the question,  
7 shall be reserved to the time of the trial.

8           IT IS FURTHER STIPULATED AND AGREED that the  
9 within deposition may be signed and sworn to before  
10 any officer authorized to administer an oath, with  
11 the same force and effect as if signed and sworn to  
12 before the Court.

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## ROBERT WUTTKE

1 ROBERT WUTTKE,  
2 having been first duly sworn by the Notary Public  
3 (Gabriel Alicea), was examined and testified as  
4 follows:

5  
6 CONTINUED EXAMINATION

7 BY MS. BELLANTONI:

8 Q. So I just want to go back and make sure  
9 that I went over certain documents with you from  
10 your testimony of last week. I'm going to hand you  
11 what's been marked as Plaintiff's Exhibit 15, which  
12 is Bates stamped 0150. It's entitled, "Mount Vernon  
13 Police Department, supervisor's report, MV93." I  
14 just ask you to take a look at that. You may have  
15 looked at it last week. If so, I apologize for  
16 making you look at it again. Do you recognize that  
17 document?

18 A. Yes, I do.

19 Q. And you recognize that to be what?

20 A. The supervisor's report -- supervisor's  
21 report I wrote in regard to the violation of policy.

22 Q. Okay. And so that's the report. Do you  
23 see your name anywhere on that as being the author  
24 of the report?

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1 A. Yes, I do.

2 Q. And where would that be?

3 A. Second page, second-to-last line.

4 Q. Okay. And your recommendation on whether  
5 any disciplinary action should be taken against  
6 Officer Bovell in connection with the sick leave  
7 policy is contained on that document?

8 A. Yes, ma'am.

9 Q. And did you speak with anyone in  
10 administration prior to creating that document?

11 A. No.

12 Q. And was that document created, you know,  
13 based on your own assessment of Officer Bovell's  
14 work history and his calling out sick?

15 MR. SWEENEY: Objection to the form, but  
16 you can answer it.

17 A. I'm confused.

18 Q. When was it based -- when you wrote the  
19 document, drafted it, was it based on your own  
20 assessment of looking at his prior callouts for sick  
21 time?

22 A. Yes, ma'am.

23 Q. I'll take that. And I'll show you what's  
24 been marked as Plaintiff's Exhibit 20, which is

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1 Bates stamped 0153. Have you seen that document  
2 before?

3 A. Yes.

4 Q. Okay. And who drafted or who is the  
5 author of that document?

6 A. Captain Michael Goldman.

7 Q. Goldman?

8 A. Yes, ma'am.

9 Q. Okay. And at the -- when is that document  
10 dated?

11 A. April 2nd, 2014.

12 Q. And at the time that that document was  
13 drafted, was Captain Goldman the individual in  
14 administration who would be responsible for creating  
15 documents of that type?

16 A. To be honest, I don't know what his  
17 responsibilities actually entailed as far as  
18 somebody else that could have done it.

19 Q. Okay. What type of document is it?

20 A. It's his conclusion that he agrees with my  
21 recommendation.

22 Q. Okay. So if you look at the top of the  
23 document, supervisor's report, 14-038, entitled,  
24 "Disciplinary Police Officer Murashea Bovell," and

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1 directly under that, it says "chronic sick." Is  
2 that correct?

3 A. Yes.

4 Q. And would Captain Goldman, at that time,  
5 if you know -- which is similar to the question I  
6 asked before -- well, let me withdraw.

7 Other than Captain Goldman, who else would  
8 have been in a position to draft a disciplinary  
9 report or disciplinary memo such as this in  
10 connection with a police officer or patrol officer?

11 A. I know my reports go to the commanding  
12 officer of my division. So he would draft something  
13 similar.

14 Q. And who would the commanding officer of  
15 your division have been at that time?

16 A. I don't remember if it was Captain  
17 Hastings or Deputy Chief Dumser.

18 Q. And you said Captain Hastings?

19 A. Yes, ma'am.

20 Q. And Deputy Chief Dumser and Captain  
21 Hastings are both Caucasian?

22 A. Yes, ma'am.

23 Q. Would, if you know, Deputy Chief Dumser  
24 and/or Captain Hastings have the authority or be in

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1 a position to have the authority to draft that type  
2 of document in connection with a patrol officer's  
3 violation of the sick leave policy?

4 A. They would draft a document similar to it  
5 with their recommendation, and then it would be  
6 forwarded to the chief of the department or the  
7 executive officer of the department.

8 Q. And the executive officer of the  
9 department at that point in time was?

10 A. Captain Goldman.

11 Q. Captain Goldman. Do you know if Deputy  
12 Chief Dumser or Captain Hastings in fact drafted a  
13 report like that and forwarded it to Captain  
14 Goldman?

15 A. I have no idea.

16 Q. And -- I will take that document back.  
17 Thank you. And we talked last week about your  
18 creating a performance evaluation for Officer  
19 Bovell. Do you recall that?

20 A. Yes, ma'am.

21 Q. Okay. And you had testified that, prior  
22 to drafting the performance evaluation for Officer  
23 Bovell, you had requested from, I want to say  
24 personnel, but I think that's not the right

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1 department. So what's the name of the department  
2 that you requested his statistics from?

3 A. Support services.

4 Q. And you did that by email; is that  
5 correct?

6 A. Yes, ma'am.

7 Q. Did you make any requests of support  
8 services in connection with Officer Bovell and his  
9 performance evaluation, other than by email?

10 A. Not that I recall.

11 Q. And the woman or the individual that you  
12 directed that request to was Lisa Hill?

13 A. Yes, ma'am.

14 Q. And at or around the time that you  
15 requested Officer Bovell's arrest and summons  
16 activity in connection with creating his performance  
17 evaluation, did you request any other information  
18 from Lisa Hill in connection with Officer Bovell?

19 A. No.

20 Q. And I'm going to show you what's been  
21 marked as Plaintiff's Exhibits 23, 24, and 25, which  
22 are Bates stamped 010, 011, and 012. And I may have  
23 showed it to you last week as well, but do you  
24 recognize that document?

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1 A. Looks like a printout from the AS400  
2 system.

3 Q. And what exactly is depicted in those  
4 documents?

5 A. Dates, times, incident numbers, and names,  
6 with an officer's ID number.

7 Q. And whose ID number is that?

8 A. I have no idea.

9 Q. And the information you received from Lisa  
10 Hill, did Lisa Hill provide you with any information  
11 in connection with Officer Bovell's statistics?

12 A. Yes.

13 Q. Looking at the three documents in front of  
14 you, did the information that Lisa Hill provide  
15 appear in the same format as those documents?

16 A. No.

17 Q. How did it appear to you?

18 A. A chart would be the best way to describe  
19 it.

20 Q. And what exactly was contained within that  
21 information?

22 A. At that time, for parking violations,  
23 summons written, violation of -- moving violations,  
24 summons written, violations of city ordinances,



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1 summons written, and arrest numbers or number of  
2 arrest, rather.

3 Q. And would the information provided to you  
4 by Lisa Hill contain arrests in connection with  
5 calls that were not dispatched?

6 A. Yes.

7 Q. And so is it fair to say that you took the  
8 information provided to you by Lisa Hill that was  
9 compiled in chart form and used that to draft  
10 Officer Bovell's performance evaluation?

11 A. In part.

12 Q. What else did you -- and I may have asked  
13 you this last week, but I just need to refresh my  
14 recollection. Other than the statistical  
15 information provided to you by Lisa Hill, what other  
16 information or documentation did you rely on to  
17 create Officer Bovell's performance evaluation?

18 A. There was no other -- well, the sick time  
19 that I had already looked into. And then it's --  
20 there's other categories and the evaluation form  
21 that have to be --

22 Q. Such as?

23 A. Personal appearance. Off the top of my  
24 head, personal appearance is on there, punctuality,

1 attitude. I can't think of the rest of the  
2 categories.

3 Q. All right. I'm going to show you what's  
4 been marked as Plaintiff's Exhibit 22, which is  
5 Bates stamped 084, 085, and 086, the first page  
6 being the appeal form for the evaluation, but next  
7 two pages being the personnel performance  
8 evaluation. You can take a look at that and let me  
9 know if you recognize that document.

10 A. Yes. This is the original evaluation that  
11 I wrote.

12 Q. All right. So what are the categories --  
13 just to make it easier for you -- other than  
14 personal appearance, punctuality, and attitude, what  
15 are the other categories on which Officer Bovell was  
16 judged?

17 A. Professional relationships, initiative,  
18 public relations, policies and procedure, quantity  
19 and quality of work, responsibility and  
20 dependability, appearance, and judgment.

21 Q. And I believe you testified last week  
22 that, during the time period between January 2014  
23 and when this performance evaluation was created by  
24 you in and around March of 2014 -- is that accurate?

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1 A. No, it's not.

2 Q. May --

3 A. April.

4 Q. April 2014. So during that period, is it  
5 accurate to say that you supervised direct  
6 supervision over Officer Bovell one to two times a  
7 week?

8 A. Yes, ma'am. No. I'm sorry. I misspoke.  
9 One to two times every third week.

10 Q. Okay. So it's even less than one to two  
11 times a week?

12 A. Yes, ma'am.

13 Q. And in drafting the performance evaluation  
14 for Officer Bovell, did you consult any other  
15 individuals?

16 A. In regards to?

17 Q. Drafting his performance evaluation and  
18 coming up with information or at least a guide to  
19 assist you in evaluating him when your direct  
20 supervision of Officer Bovell was only one to two  
21 times every third week?

22 A. I consulted with my lieutenant in regards  
23 to the lack of actual supervision.

24 Q. And that was Lieutenant Gallagher?

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1 A. Yes, ma'am.

2 Q. We talked about that last week.

3 A. Yes, we did. But the conversation I had  
4 with Lieutenant Gallagher was not specific to Police  
5 Officer Bovell. It was generalized, based on the  
6 fact that the schedules don't add up to make  
7 supervision easy.

8 Q. And other than yourself, I believe there  
9 was Sergeant Scott who would also have supervised  
10 Officer Bovell during that period?

11 A. Every supervisor in the patrol division  
12 would have supervised Officer Bovell during that  
13 time period.

14 Q. And so one of those people would be  
15 Sergeant Scott?

16 A. Yes, ma'am.

17 Q. Okay. And who else?

18 A. Every supervisor that was in the patrol  
19 division.

20 Q. Okay.

21 A. I don't remember who was assigned to the  
22 patrol division at that particular time.

23 Q. Was it your testimony that there were  
24 approximately ten sergeants in the patrol division

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1 at that time?

2 A. It was.

3 Q. And if you know, how was a decision  
4 made -- withdrawn.

5 If you know, how did each patrol  
6 officer -- withdrawn.

7 How was it that you were assigned to  
8 specific individuals to evaluate?

9 A. I have no idea.

10 Q. Okay. Who would have been in charge of  
11 making that determination and assigning specific  
12 patrol officers to specific sergeants?

13 A. The patrol division office. I don't know  
14 which member of the patrol division office would  
15 have made that decision though.

16 Q. And who was in the patrol division office  
17 at that time?

18 A. I believe it was Captain Hastings and  
19 Deputy Chief Dumser.

20 Q. Other than Officer Bovell, who did you  
21 evaluate at that time?

22 A. Off the top of my head, Police Officer  
23 Giusto, Police Officer Montesano, Police Officer  
24 Hall, Police Officer Williams, Police Officer

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1 Pacino, Police Officer O'Rourke, and there might  
2 have been one or two others.

3 Q. Other than Officer Bovell, any of the  
4 individuals you named African-American?

5 A. Yes, ma'am.

6 Q. Who?

7 A. Police officer Williams, Police Officer  
8 Hall.

9 Q. Anyone else?

10 A. No, ma'am.

11 Q. Okay. And would any other patrol sergeant  
12 have had more contact than Officer Bovell, if you  
13 know, during that time period than you did?

14 A. I don't know.

15 Q. And you had testified that you did not  
16 personally go over Officer Bovell's evaluation with  
17 him; is that right?

18 A. Yes, ma'am.

19 Q. And I believe you testified it was  
20 Sergeant Scott who went over Officer Bovell's  
21 evaluation with him?

22 A. Yes, ma'am.

23 Q. And Officer Scott is an African-American  
24 officer?

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1           A.    I'm sorry. Can you say that again.

2           Q.    Yes. Sergeant Scott is an  
3 African-American?

4           A.    Yes, ma'am.

5           Q.    And did you request that Sergeant Scott go  
6 over Officer Bovell's performance evaluation with  
7 him?

8           A.    Yes.

9           Q.    And why did you pick Sergeant Scott as  
10 opposed to any other patrol sergeant?

11          A.    Because Sergeant Scott was my partner, and  
12 he was going to be working the same schedule. He  
13 had access to my files.

14          Q.    And when you say "partner," what does that  
15 mean?

16          A.    He and I worked together every day. We  
17 were the two sergeants assigned to the same  
18 schedule.

19          Q.    Okay. So as far as consistency is  
20 concerned, you and Sergeant Scott were together as  
21 patrol sergeants on the same designated shift?

22          A.    Yes. And Lieutenant Gallagher as well.

23          Q.    And how long did you and Sergeant Scott  
24 work in that capacity -- well, how long had you been



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1 working together in that capacity as of March or  
2 April of 2014?

3 A. From the day I was promoted to sergeant.

4 Q. I'm going to show you what's been marked  
5 as Plaintiff's Exhibit 27, which is Bates stamped  
6 0143, 0144, 0145, and 0146. Do you recognize that  
7 document?

8 A. Yes, I do, ma'am.

9 Q. And what do you recognize that to be?

10 A. A section from the department manual.

11 Q. Okay. Is that section -- when you say,  
12 "The department manual," are you referring to the  
13 rules and regulations of the City of Mount Vernon  
14 Police Department?

15 A. Yes, ma'am.

16 Q. And what section does that exhibit pertain  
17 to?

18 A. Administrative guide procedure 2.002,  
19 which is the personnel performance evaluation  
20 section.

21 Q. Okay. And those are -- would you agree  
22 that those are rules in the same way that the  
23 chronic sick policy is made up of rules, that both  
24 sections need to be followed by the employees of the

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1 City of Mount Vernon Police Department?

2 A. Yes.

3 Q. And can we both agree that violation of  
4 either one of those sets of rules could potentially  
5 result in disciplinary action?

6 A. It could, yes.

7 Q. If you could turn to the second page at  
8 Section 3D, and can you just read that out loud for  
9 me, please.

10 A. "The rater will schedule an appointment  
11 during members or duty prior to submitting the  
12 evaluation form. Both the rater and the employee  
13 will review and discuss the evaluation together.  
14 This allows both individuals to discuss the  
15 guidelines and affords the rater the opportunity to  
16 coach, counsel the employee regarding past  
17 performance or expectations for future performance."

18 Q. And in connection with Officer Bovell's  
19 performance evaluation, who was the rater?

20 A. I was.

21 Q. And what is your understanding of the  
22 purpose behind Section 3D?

23 A. The purpose behind it would be so the two  
24 individuals can sit down and discuss the performance

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1 evaluation.

2 Q. And is it fair to say that you, in fact,  
3 did not schedule time with Officer Bovell to go over  
4 his performance evaluation that you had rated him  
5 on; is that accurate?

6 A. That is correct.

7 Q. So you would have violated Section 3D of  
8 that set of rules and regulations?

9 MR. SWEENEY: Objection to the form of the  
10 question. But you can answer it, if you  
11 understand it.

12 A. I'm sorry. Could you repeat it again.

13 Q. Sure. In just looking at Section 3D, is  
14 there any portion of that section that you failed to  
15 comply with?

16 A. Yes, ma'am.

17 Q. And what portion of that section did you  
18 fail to comply with?

19 A. The whole section.

20 Q. And had you received any write-up or  
21 verbal counseling in connection with your violation  
22 of that section?

23 A. No, ma'am.

24 Q. Did you receive any supervisor's report

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1 drafted in connection with your violation of that  
2 section?

3 A. No, ma'am.

4 Q. And when you completed Officer Bovell's  
5 performance evaluation after Sergeant Scott went  
6 over it with him, was it then, to your knowledge,  
7 forwarded to any other individuals?

8 MR. SWEENEY: Object to the form, but you  
9 can answer.

10 Q. Withdrawn.

11 After Officer Bovell had been sat down and  
12 his evaluation had been gone over between him and  
13 Sergeant Scott, do you know whether that performance  
14 evaluation was forwarded to anyone else?

15 A. Yes.

16 Q. And who was it forwarded to?

17 A. The executive officer -- excuse me. The  
18 executive officer of the patrol division, which I  
19 believe was Captain Hastings at the time.

20 Q. And looking at Exhibit 22, that you still  
21 have in front of you, is your signature as the rater  
22 contained on that document?

23 A. Yes, ma'am.

24 Q. And where is it contained?

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1           A.     The first page of the evaluation and the  
2     second page of the evaluation.

3           Q.     And is Sergeant Scott's signature  
4     contained on that document?

5           A.     No, ma'am.

6           Q.     And is there a spot on that evaluation for  
7     the rater -- withdrawn.

8                     Is there a spot on that evaluation form  
9     for the individual who sits down and goes over the  
10    evaluation with the patrol officer to sign?

11          A.     No, ma'am.

12          Q.     So looking at that document, the  
13    performance evaluation, is there any way for an  
14    individual to identify or become aware of the fact  
15    that you, as the rater, did not sit down with  
16    Officer Bovell and go over the written evaluation?

17          A.     No.

18          Q.     Did you tell either Captain Hastings or --  
19    is it Captain Hastings?

20          A.     There is a Captain Hastings, yes.

21          Q.     Was it a Captain Hastings -- and Dumser  
22    was --

23          A.     Deputy chief.

24          Q.     Did you tell either Captain Hastings or

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1 Deputy Chief Dumser that you had not been the  
2 individual to sit down with Officer Bovell and go  
3 over his performance evaluation?

4 A. I don't remember.

5 Q. If you look at the evaluation -- and you  
6 can go to the second page of that exhibit -- with  
7 respect to the first category, "Professional  
8 relationships," and I see that you rated Officer  
9 Bovell a three. What information did you rely on to  
10 give him that rating?

11 A. Whether I had been advised of or heard of  
12 any complaints between Officer Bovell and other  
13 members of service.

14 Q. And had you heard any complaints from  
15 anyone else?

16 A. No, ma'am.

17 Q. So I just want to go back to a question I  
18 asked a few moments ago. And maybe I was unclear.  
19 I may have asked you only what documents you relied  
20 on in connection with your creation of the  
21 performance evaluation for Officer Bovell. Aside  
22 from documentation or statistics or any computer  
23 information, what other information did you rely on  
24 to create Officer Bovell's performance evaluation?

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1           A.     Interactions between he and I and whether  
2     I had heard of or was made aware of any complaints  
3     that either members of the department had regarding  
4     Police Officer Bovell or civilian complaints that  
5     were filed against him during the time frame that I  
6     was evaluating him.

7           Q.     And at the time that you were creating  
8     Officer Bovell's performance evaluation, did you  
9     seek out other individuals and ask for feedback from  
10    them in connection with the evaluation?

11          A.     No, ma'am.

12          Q.     So at the time you were creating his  
13    performance evaluation, were you relying on just  
14    things you had heard generally throughout the  
15    department and been informed of at that point in  
16    time?

17          A.     Yes, ma'am.

18          Q.     And I think we talked about, last week,  
19    whether you had gone to his prior supervisors in the  
20    detective bureau to get information from them in  
21    connection with his performance evaluation. Had you  
22    done that?

23          A.     No, I hadn't.

24          Q.     Is there any reason why you did not seek



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1 out the feedback from his prior supervisors in the  
2 detective division?

3 A. I was told by Lieutenant Gallagher to  
4 evaluate him based on his time in patrol.

5 Q. Was that in connection with every category  
6 on the evaluation form?

7 A. I don't understand what you are asking.

8 Q. Lieutenant Gallagher told you or  
9 instructed you to base your evaluation of Officer  
10 Bovell only on the time that he spent in patrol; is  
11 that accurate?

12 A. The question was as to Lieutenant  
13 Gallagher in a general form, should I just look into  
14 everybody based on the time that I had been their  
15 supervisor. It wasn't directed -- it wasn't a  
16 question that was specific to Police Officer Bovell.

17 Q. Were any of the individuals that you  
18 evaluated at that time assigned to assignments other  
19 than patrol?

20 A. Yes, ma'am.

21 Q. Okay. So when you asked for information  
22 regarding Officer Bovell's arrests and summonses  
23 from Lisa Hill, does that information contain  
24 arrests that Officer Bovell had made in the

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1 detective division?

2 A. I would have to look at the reports that  
3 she gave me back.

4 Q. Did you ask Lisa Hill to run a report for  
5 the entire year that you were evaluating Officer  
6 Bovell on?

7 A. I asked Lisa Hill in my email to provide  
8 me with statistics from the time frame, which would  
9 have been February -- excuse me, I misspoke --  
10 April 2013 through March 31st of 2014.

11 Q. Okay. So is it safe to assume that, if  
12 you ask for statistics for the time period of  
13 April 1st, 2013, through March 31st, 2014, that  
14 would necessarily include any arrests and/or  
15 statistics from Officer Bovell's service in the  
16 detective division?

17 A. It would be a safe assumption to be.

18 Q. How -- withdrawn.

19 What if any information did you have to  
20 formulate giving Officer Bovell a three on  
21 initiative in his evaluation?

22 A. I'm sorry. I don't understand the  
23 question.

24 Q. What information did you have that

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1 prompted you to evaluate Officer Bovell as a three,  
2 which is satisfactory, in the area of "initiative"  
3 on the evaluation?

4 A. The same information that I use for just  
5 about all the categories, what I experienced in my  
6 dealings with him and what I had heard regarding  
7 him.

8 Q. And what did you -- what had you heard  
9 with respect to Officer Bovell's initiative?

10 A. That it was satisfactory.

11 Q. And who did you hear that from?

12 A. I don't remember.

13 Q. And what personal information did you have  
14 that his initiative was just satisfactory?

15 MR. SWEENEY: Objection to form, but you  
16 can answer.

17 A. What information did I have that it was  
18 satisfactory?

19 Q. Yes, as opposed to highly effective.

20 A. I don't remember, off the top of my head.  
21 Must have been something along the lines of not  
22 having ever had him tell me, no, I'm not going to  
23 take care of something, or I'm not going to do it,  
24 and his general overall attitudes how he was going

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1 to handle his jobs and assignments.

2 Q. So he was always willing to accept his  
3 assignments in a positive manner?

4 A. He was always willing to accept his  
5 assignments.

6 Q. He didn't have a positive attitude?

7 A. I didn't say that.

8 Q. Would you agree he had a positive  
9 attitude?

10 A. I believe his attitude, at times, was less  
11 than positive.

12 Q. Based on what?

13 A. Excuse me?

14 Q. Based on what?

15 A. My dealings with him.

16 Q. Okay. What, specifically?

17 A. I don't -- I can't give you a specific  
18 example. If I had to point to one example off the  
19 top of my head, it would be the long, unnecessary  
20 officer's reports that were submitted in regards to  
21 his denial of a day off that had nothing to do with  
22 me.

23 Q. And that -- was that the reason why you  
24 were assigning him a three as opposed to a four?

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1           A.    He wasn't assigned a three for attitude,  
2   ma'am.

3           Q.    Yes.  So on his first evaluation, what did  
4   you rank Officer Bovell with respect to attitude?

5           A.    Two.

6           Q.    And with respect to public relations, what  
7   was your evaluation?

8           A.    Three.

9           Q.    Which is satisfactory; correct?

10          A.    Yes, ma'am.

11          Q.    And two stands for, needs improvement?

12          A.    Yes, it does.

13          Q.    And under the category of public  
14   relations, what information did you rely on to  
15   assign Officer Bovell a three?

16          A.    My interactions of Officer Bovell with the  
17   public and whether there were complaints generated  
18   or complaints on file with the public.

19          Q.    Were there any complaints filed against  
20   Officer Bovell?

21          A.    Off the top of my head, I don't know.

22          Q.    And why was Officer Bovell not assigned a  
23   four in that category, public relations?

24          A.    I would have to look back and see if there

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1 were complaints filed on him, against him at the  
2 time.

3 Q. Civilian complaints?

4 A. Yes, ma'am.

5 Q. If there had been civilian complaints  
6 filed against Officer Bovell, would you have  
7 assigned him a three or a two?

8 A. That would depend on the nature of the  
9 complaint.

10 Q. And with respect to work ethic, what did  
11 you assign Officer Bovell as far as policies and  
12 procedures?

13 A. There isn't a category for work ethic. If  
14 you are referring to the quality and quantity of  
15 work, I assigned him a two.

16 Q. And why did you assign him a two?

17 A. Based on the statistics I was provided by  
18 support services.

19 Q. In the middle of the page, there's a bold  
20 underlined word, "work ethic." So I'm just going  
21 down through the categories.

22 A. Oh, you're just going through those  
23 categories. Okay.

24 Q. So under "work ethics," the first section

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1 is policy and procedure; correct?

2 A. Yes, ma'am.

3 Q. And what did you assign Officer Bovell  
4 under that?

5 A. Three.

6 Q. Okay. And why was he not assigned a four?  
7 Was he not -- did he not have sufficient knowledge  
8 of the policies and procedures of the department?

9 A. No. I believe his knowledge of the  
10 policies and procedures of the department were  
11 satisfactory.

12 Q. And why would you consider them  
13 satisfactory as opposed to highly effective?

14 A. In this particular instance, I don't  
15 really think that anybody is highly effective in  
16 whether or not they know the rules and regulations  
17 of the department. Either you know them or you  
18 don't. It's either satisfactory that you know them  
19 or you need improvement and need to learn your rules  
20 and regulations.

21 Q. So if a police officer knew every policy  
22 and procedure and had no issue with needing to, you  
23 know -- withdrawn.

24 Under what circumstances would an



1 individual being evaluated by yourself be issued a  
2 four under policies and procedures?

3 A. I don't know that I would issue a four.  
4 As I said before, either you know the rules or you  
5 don't. You neither satisfactorily meet that or you  
6 don't meet that.

7 Q. And under "attendance and punctuality,"  
8 what did you assign Officer Bovell?

9 A. Three.

10 Q. And quality and quantity of work?

11 A. Two.

12 Q. And why was he assigned a two?

13 A. Based on the statistics that I was  
14 provided by support services.

15 Q. Responsibility and dependability, what was  
16 his assigned number?

17 A. Three.

18 Q. And appearance?

19 A. Three.

20 Q. And judgment?

21 A. Three.

22 Q. And under what circumstances would an  
23 officer be assigned a four for responsibility and  
24 dependability by you?

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1           A.     That would be -- it would be a rare  
2 instance, but that would be, you know, an officer  
3 that was completely able to work without any  
4 supervision without having any questions about how a  
5 certain case should be handled. I mean, I -- that  
6 would be a very rare instance, I believe.

7           Q.     And appearance? Under what circumstances  
8 would an officer be rated a four by yourself?

9           A.     That guy, usually a -- it's usually a  
10 military guy. Shoes are always shined. Equipment  
11 is always well maintained. Nothing ever looks  
12 scratched, torn, dirty.

13          Q.     And judgment, under what circumstances  
14 would an individual be assigned a four?

15          A.     I don't know.

16          Q.     Did you have a conversation with Sergeant  
17 Scott after he sat down with Officer Bovell in  
18 connection with his evaluation?

19          A.     Yes, ma'am.

20          Q.     And what was the substance of that  
21 conversation?

22          A.     In substance, he told me Officer Bovell  
23 was going to be appealing his evaluation. He had  
24 initially refused to even sign the evaluation. It

1 wasn't until Detective Sergeant Scott pointed out  
2 that it was part of the rules and regulations that  
3 he signed the evaluation that he signed it, and I  
4 think that was about it.

5 Q. Did he tell you what Officer Bovell was  
6 upset about?

7 A. Yeah. He said he was upset about the  
8 entire thing, the whole evaluation.

9 Q. And are you aware that Officer Bovell  
10 appealed the evaluation?

11 A. When Sergeant Scott told me he was going  
12 to appeal it.

13 Q. And did there come a point in time where  
14 you created an amended evaluation?

15 A. Yes, ma'am.

16 Q. And who did you speak to in between the  
17 point in time that you spoke with Sergeant Scott and  
18 the point in time that you created an amended  
19 evaluation in connection with Officer Bovell's  
20 evaluation?

21 A. Lots of people.

22 Q. Okay. Such as?

23 A. Lieutenant Gallagher, Captain Hastings,  
24 Deputy Commissioner Burke, Dumser, Lieutenant Scott,

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1 Sergeant McEachin, Lieutenant Ziadie. There may be  
2 others.

3 Q. Okay. And what was the substance of your  
4 conversations with Lieutenant Gallagher?

5 A. That Bovell was appealing his evaluation.  
6 He was going to have to do a review.

7 Q. Who was going to have to do a review?

8 A. Lieutenant Gallagher.

9 Q. And do you know if he did that review?

10 A. I have no idea.

11 Q. Did you bring that to Lieutenant  
12 Gallagher's attention, or did he bring it to your  
13 attention that an appeal was going to be done?

14 MR. SWEENEY: Objection to the form, but  
15 you can answer.

16 A. I think I brought it to his attention.

17 Q. And what was the substance of your  
18 conversation with Captain Hastings?

19 A. Same thing, regarding how the appeal  
20 process went, because I was unfamiliar with it, how  
21 it had to be, how it was handled, who it went to,  
22 and what had to be done.

23 Q. So your conversation with Captain Hastings  
24 was after the appeals process was over?

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1 A. No, ma'am.

2 Q. So, specifically, what was your  
3 conversation with Captain Hastings about the appeal  
4 process and who would handle it and how it would be  
5 done?

6 A. I believe it went something along the  
7 lines of Bovell is appealing his evaluation. What  
8 do we have to do?

9 Q. And what did he say?

10 A. Lieutenant Gallagher has to review his  
11 evaluation.

12 Q. And did Lieutenant Gallagher tell you,  
13 specifically, how he goes about reviewing the  
14 evaluation?

15 A. I didn't ask.

16 Q. Did you ever learn how Lieutenant  
17 Gallagher goes about reviewing the evaluation?

18 A. No, I didn't.

19 Q. Was anyone other than Lieutenant Gallagher  
20 involved in reviewing Officer Bovell's evaluation?

21 A. At what point? Excuse me. At what point?

22 Q. At any point.

23 A. Yes.

24 Q. Okay. Can you tell me how that process

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1 goes?

2 A. No.

3 Q. Why is that?

4 A. I don't know.

5 Q. How do you know that someone other than  
6 Lieutenant Gallagher is involved in the appeals  
7 process?

8 A. Because it came from me to the captain,  
9 from the captain to the lieutenant. So I know that  
10 the captain is involved, but I don't know in what  
11 way.

12 Q. Okay. What were your conversations  
13 with -- was it Deputy Commissioner Burke?

14 A. Yes, ma'am.

15 Q. In connection with Officer Bovell's  
16 appeal?

17 A. It was after we found out that the  
18 statistics I was initially given was wrong, and I  
19 asked him how he wanted me to handle it.

20 Q. And how did you find out that the  
21 statistics were wrong?

22 A. Quarterly queries of the people under my  
23 supervision.

24 Q. What does that mean?

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1           A.     It means quarterly, or every few months, I  
2     asked Lisa Hill for the statistics of people under  
3     my supervision.

4           Q.     So this is the second time that you asked  
5     Lisa Hill for information?

6           A.     I think I asked her three times total.

7           Q.     The first time was in March or April of  
8     2014; is that correct?

9           A.     Yes, ma'am.

10          Q.     And the second time was when?

11          A.     Somewhere around July or August.

12          Q.     And the third time?

13          A.     Towards the end of the year, probably  
14     October or November.

15          Q.     And when was it that you realized that  
16     your statistics for Officer Bovell were incorrect  
17     back in March of 2014?

18                 MR. SWEENEY:  Objection to the form.  But  
19     you can answer.

20                 MS. BELLANTONI:  Can you read it back.

21

22                         (Record read back.)

23

24          Q.     Withdrawn.



ROBERT WUTTKE

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1           At what point in time did you realize that  
2           the statistics you relied on in creating his  
3           performance evaluation were incorrect?

4           A.    I believe it was November.

5           Q.    And how did that take place?

6           A.    I looked at the statistics that I was  
7           provided in November, and they were grossly  
8           different than what I was provided in the prior two  
9           queries.

10          Q.    And did you find out why that would be?

11          A.    No.   I never did get an answer on that.

12          Q.    Did you inquire?

13          A.    Yes, I did.

14          Q.    Of who?

15          A.    Lisa Hill, Lieutenant Ziadie, and I  
16          believe, Sergeant McEachin.

17          Q.    And what did Lisa Hill say?

18          A.    I have no idea.

19          Q.    You inquired of Lisa Hill as to why the  
20          statistics in the fall would have been so different  
21          from the statistics in the spring?

22          A.    Yes.

23          Q.    And you don't recall what she said?

24          A.    No.   You asked me what she said.   And I

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1 told you, she said, I have no idea.

2 Q. Oh. She said, quote, I have no idea?

3 A. Yes.

4 Q. Who was responsible for inputting  
5 information on arrests and summonses and so forth?

6 A. The personnel and support services. I  
7 don't know who does each function. I know it's the  
8 personnel that works inside of that division.

9 Q. And what was the substance of your  
10 conversation with -- is it Sergeant Ziadie?

11 A. Lieutenant.

12 Q. Okay. In connection with either Officer  
13 Bovell's appeal of his evaluation or the statistics  
14 having changed.

15 A. In substance, it was, the statistics are  
16 way off and something's not right. Can you figure  
17 out why.

18 Q. And that was your statement to him?

19 A. That was me asking him to see if he could  
20 figure out why the numbers I got were so off.

21 Q. And did he give you a response?

22 A. Yes, he did.

23 Q. And what was that response?

24 A. You have to ask Lisa Hill.

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1 Q. Who said, I have no idea?

2 A. Yes.

3 Q. And Sergeant McEachin?

4 A. Yes.

5 Q. What was the substance of your  
6 conversation with him, either in connection with  
7 Officer Bovell's appeal, his evaluation, or the  
8 change in the numbers?

9 A. Same conversation as I had with Lieutenant  
10 Ziadie.

11 Q. When you asked Lisa Hill in the spring of  
12 2013 for the statistics for the officers that you  
13 were going to be evaluating, was your request, at  
14 that point in time, any different than the quarterly  
15 reports that are generated in July and then again in  
16 the fall?

17 MR. SWEENEY: Objection to the form. But  
18 you can answer it, if you understand it.

19 A. My request to her was always very -- very  
20 similar: Can you pull me the statistics on the  
21 following officers.

22 Q. And the queries that you made of Lisa in  
23 July and August and October and November -- I'm just  
24 saying, slash, summer and fall -- were those in

1 writing as well?

2 A. Email.

3 Q. And is it the case that you need to  
4 request the quarterly reports? In other words, they  
5 are not just provided to you quarterly?

6 A. No. They are not just provided. It's  
7 something that you would have to ask for.

8 Q. And were the statistics for any other  
9 officers markedly different than -- withdrawn.

10 In the fall, were the statistics for any  
11 of the other officers that you evaluated markedly  
12 different than the statistics you had received in  
13 the spring in 2014?

14 MR. SWEENEY: Objection to the form, but  
15 you can answer.

16 A. I don't recall. I don't think I ever  
17 looked into it.

18 Q. So is it accurate to say that, once you  
19 received the quarterly report in the fall of 2014,  
20 that is the first time that you realized that  
21 Officer Bovell's statistics in the spring of 2014  
22 had been markedly under-reported?

23 A. That would be fair, yeah. Sometime around  
24 November that I looked at it and said, It doesn't

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1 make sense.

2 Q. To your knowledge, had the appeals process  
3 in connection with Officer Bovell's evaluation been  
4 completed as of November or the fall of 2014?

5 A. I don't know.

6 Q. At what point in time did you create an  
7 amended evaluation for Officer Bovell?

8 A. I would have to look at the date. I  
9 believe it was after I realized there was an error  
10 in the stats.

11 Q. And was the creation of your amended  
12 evaluation related at all to the appeal that Officer  
13 Bovell had filed?

14 A. I guess, yeah, it would be in conjunction  
15 with that. Yes.

16 Q. To your knowledge, did Lieutenant  
17 Gallagher ever make a decision with respect to  
18 Officer Bovell's appeal?

19 A. I don't know what Lieutenant Gallagher  
20 did.

21 Q. Well, did you have a conversation with him  
22 about the appeal and your intention to amend Officer  
23 Bovell's evaluation?

24 A. No, ma'am.

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1 Q. Did you have conversation with anyone  
2 about your intention to amend Officer Bovell's  
3 evaluation?

4 A. Yes, ma'am.

5 Q. Who?

6 A. Deputy Commissioner Burke.

7 Q. Anyone else?

8 A. I'm sure I mentioned it to Sergeant Scott.  
9 He and I worked together every day. I'm sure I  
10 mentioned it to him. And I would -- I would assume  
11 that I mentioned it to the captain as well, Captain  
12 Hastings.

13 Q. As you sit here, can you think of any  
14 reason why you wouldn't have spoken to Lieutenant  
15 Gallagher about your intention to amend Officer  
16 Bovell's evaluation, considering that he was the  
17 individual who's conducting the appeals process?

18 A. Yes, ma'am. He went out injured.

19 Q. Okay. When was that?

20 A. I don't remember the date.

21 Q. Did anyone instruct you to create an  
22 amended evaluation for Officer Bovell?

23 A. Yes, ma'am.

24 Q. Who was that?

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1 A. Deputy Commissioner Burke.

2 Q. And when Lieutenant Gallagher went out  
3 injured, who -- do you know if the appeals process  
4 had been completed at that time?

5 A. I don't know.

6 Q. Do you know if anyone took over the  
7 appeals process?

8 A. I don't know.

9 Q. Okay. I will show you what's been marked  
10 as Plaintiff's Exhibit 28. Before I do that, is it  
11 fair to say that the new -- new knowledge of the  
12 statistics for Officer Bovell for the time period  
13 that you were responsible for evaluating him would  
14 have changed the quality and quantity rating on his  
15 evaluation?

16 A. Yes.

17 Q. And it would have, I'm assuming, increased  
18 in -- in satisfaction; correct?

19 A. Yes, ma'am.

20 Q. And is there any other section, as you sit  
21 here, that you can think of, that would be  
22 affected -- and you can look at the original  
23 performance evaluation -- that would be affected by  
24 the change in statistics, increase in arrests and

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1 summonses?

2 A. Attitude would change.

3 Q. And why is that?

4 A. Because the drastic difference in  
5 productivity would mean, or on face value, appear  
6 that the officer was more interested in doing their  
7 job and more interested in meeting some type of --  
8 or maybe doing some type of productive, possibly  
9 even proactive, police work.

10 Q. Can we agree that officers may be  
11 extremely proactive and still be very negative  
12 towards the environment that they are working in?

13 A. I could agree to that, yes.

14 Q. Do you know or can you, as you sit here,  
15 think of any officers in the department that are  
16 very proactive but negative towards the environment  
17 they are working in?

18 A. Off the top of my head, no.

19 Q. Can we agree that some officers may be  
20 very positive about their job but just, for some  
21 reason, are not patently productive members of the  
22 department with respect to arrests and summonses?

23 A. I'm sorry. Could you repeat that.

24 MS. BELLANTONI: Can you read that back.



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1  
2 (Record read back.)  
3

4 A. I could agree to that, yes.

5 Q. Have you ever, in the past, complimented  
6 Officer Bovell, generally, on his productivity,  
7 whether in the narcotics unit or patrol?

8 A. I don't know.

9 Q. As you sit here, do you have a  
10 recollection of whether Officer Bovell's reputation,  
11 either in narcotics or patrol, is one of being a  
12 highly productive officer?

13 A. I don't know that I've ever heard anyone  
14 say, you know, he's out there and being super  
15 proactive. And I don't know that I ever heard  
16 anybody say that he was lazy and not doing his job.

17 Q. And you don't recall ever complimenting  
18 Officer Bovell on his productivity?

19 A. No, I don't believe so.

20 Q. Is it the fact that you don't recall mean  
21 that you never did and had no reason to or that it's  
22 possible you may have?

23 MR. SWEENEY: Objection to the form, but  
24 you can answer.

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1           A.     I may have, you know, said, hey, good job.  
2     I'm not going to sit here and say that I absolutely,  
3     definitely complimented him on his productivity or  
4     complimented him on a job well done, and I'm not  
5     going to say that I definitely didn't.

6           Q.     Within the last three to four years with  
7     respect to officers, whether they are technically  
8     detectives or patrol officers assigned to the  
9     narcotics unit, as you sit here, are there any  
10    officers that stand out in your mind as being highly  
11    productive?

12          A.     I don't know. I don't know the statistics  
13    of what the guys in narcotics are doing or have been  
14    doing.

15          Q.     What about just general, in the  
16    department?

17          A.     I can't think of anybody off the top of my  
18    head, no.

19          Q.     And when you had a conversation with  
20    Deputy Commissioner Burke about amending Officer  
21    Bovell's evaluation, other than his statistics, did  
22    Deputy Commissioner Burke instruct you to amend his  
23    evaluation based on any other factors?

24          A.     I think Deputy Commissioner Burke left it

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1 up to me and how I was going to handle it.

2 Q. And other than Officer Bovell's  
3 statistics, did you take any other factors into  
4 consideration when you completed the amended  
5 evaluation?

6 A. I would have to look at my amended  
7 evaluation to be sure.

8 Q. I'm going to show you what's been marked  
9 as Plaintiff's Exhibit 28.

10 A. Looks like this was based solely on the  
11 statistics that were reported.

12 Q. Okay. And looking at the amended  
13 evaluation versus your initial evaluation of Officer  
14 Bovell, what categories changed, if any?

15 A. Attitude and quantity and quality of work.

16 Q. And attitude previously was at a level of  
17 what?

18 A. Two.

19 Q. Which stands for what?

20 A. Needs improvement.

21 Q. And thereafter, on the amended evaluation?

22 A. Three.

23 Q. Which stands for satisfactory?

24 A. Yes, ma'am.

1 Q. And quality and quantity of work, what was  
2 his original rating?

3 A. Two.

4 Q. And on the amended evaluation?

5 A. Four.

6 Q. And so why, if his quality and quantity  
7 rating went up to a four, did his attitude rating  
8 not also rise to the level of a four?

9 A. Because that's the determination I made.

10 Q. Based on what?

11 A. Based on my perception of his attitude.

12 Q. Other than his statistics, what knowledge  
13 did you have, either documents or having heard  
14 things or personally observe things, that would  
15 continue your -- withdrawn -- that would limit your  
16 evaluation of Officer Bovell in attitude to a level  
17 three as opposed to a four?

18 A. I'm sorry. You are going to have to  
19 rephrase that.

20 Q. Sure. If you rated Officer Bovell as a  
21 four in terms of quality and quantity of work, why  
22 did you only rate him at a level three for attitude?

23 A. I believe that the quality and quantity of  
24 his work did show that he had some interest in his

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1 job. However, I still felt that, maybe, he didn't  
2 have the best attitude in the world.

3 Q. Based on what?

4 A. Based on reports that have been submitted  
5 of his displeasure with the way things were being  
6 handled, based on -- I guess that would really be  
7 about it.

8 Q. We talked about the MV5 for the sick day.  
9 You were upset he wrote an MV5 and your name was  
10 mentioned?

11 A. No. I never said I was upset, ma'am.

12 Q. Well, that's true. You never said you  
13 were upset. So you did testify that, in your rating  
14 on his attitude, that one of the things that came  
15 into play in giving him a rating of the two was the  
16 MV5 he wrote about the sick day?

17 A. I believe it was a request for a day off,  
18 but yes.

19 Q. Okay. And what is -- can you tell us what  
20 that incident involved?

21 A. Apparently, Police Officer Bovell had  
22 asked for a day off. It was denied. He came to  
23 work that day. A day shortly thereafter, he called  
24 out sick, and Lieutenant Curzio called him and said

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1 the captain was mad at him.

2 Q. And were you working during the day that  
3 he had called out sick?

4 A. I believe I was the supervisor at the  
5 desk, the tour prior to his assigned tour. And I  
6 took the sick report.

7 Q. And did you have a conversation with  
8 Lieutenant Curzio?

9 A. Regarding?

10 Q. Regarding Officer Bovell calling out sick  
11 that day.

12 A. I may have mentioned to him that PO Bovell  
13 called out sick, and it wasn't anything more than  
14 that, if there was a conversation at all.

15 Q. And what if any communication did you have  
16 with Lieutenant Curzio with -- it's lieutenant?

17 A. Yes, ma'am.

18 Q. With respect to his reaction about Officer  
19 Bovell calling out sick.

20 A. I don't know that we ever spoke about it  
21 until after I saw the MV5.

22 Q. And was there any criticism in the MV5  
23 about you?

24 A. Yes, ma'am.

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1 Q. And what was that?

2 A. If I could see the MV5, I could tell you  
3 exactly what it was.

4 Q. Well, as we sit here, what's your  
5 recollection of that?

6 A. Something about how I should have been  
7 fired a long time ago and face serious disciplinary  
8 action.

9 Q. For -- based on what? For doing what?

10 A. I don't know that it actually says.

11 Q. Okay. Other than that MV5, what other  
12 instances or events or documents did you rely on in  
13 either assigning Officer Bovell a two for attitude  
14 on his original evaluation or deciding not to assign  
15 him a four on his amended evaluation for attitude?

16 A. I think that's about it.

17 Q. And what captain was alleged to have been  
18 mad as a result of Officer Bovell's callout?

19 A. Captain Hastings.

20 Q. And did you have any conversations with  
21 Captain Hastings about that, about the callout or  
22 the MV5?

23 A. Yes, ma'am.

24 Q. And what's the substance of those

1 conversations?

2 A. Substance of it was, what the hell is  
3 going on with you and Curzio that I'm getting  
4 dragged in the middle of.

5 Q. And he responded?

6 A. I don't know. Talk to Mario.

7 Q. And did you?

8 A. Yeah.

9 Q. And what did he say?

10 A. He said, I was just kidding. I didn't  
11 know he was going to take it seriously.

12 Q. And do you know what he was just kidding  
13 about?

14 A. I never asked him, but my assumption would  
15 be the call to Bovell about the captain being upset.

16 Q. During 2014, who if anyone was  
17 responsible, who had authority, to assign police  
18 officers to the overtime detail for Con Edison?

19 A. That was -- that overtime was hired by the  
20 patrol division clerk, a police officer. I don't  
21 remember who it was.

22 Q. And how does an officer sign out or get  
23 overtime for that detail?

24 A. Well, it would start with submitting your



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1 request to be put on the overtime list. And you are  
2 put on a list, and the officer in the patrol  
3 division clerk calls down the list. Once you take  
4 the time, you move to the bottom of the list.

5 Q. Is there any consideration, if you know,  
6 with respect to seniority and being on that list?

7 A. No, ma'am.

8 Q. It's just a system or -- if you are on the  
9 list and assigned overtime, you are put on the  
10 bottom of the list and it just rotates that way?

11 A. Yes, ma'am.

12 Q. And what circumstances would an individual  
13 not be eligible to sign up for overtime on that  
14 list?

15 A. I'm sorry?

16 MR. SWEENEY: Objection to the form. But  
17 if you understand it, you can rephrase it.

18 A. I don't understand. If you could rephrase  
19 it.

20 Q. Are there any circumstances, if you know,  
21 under which an officer would be ineligible for  
22 putting his name on the overtime list for Con Ed?

23 A. There was no list for, specifically, Con  
24 Ed. There's an overtime list that is utilized to

1 fill all overtime spots, whether they be patrol,  
2 specialized details, Con Edison overtime. And in  
3 order to -- the person would be denied being put on  
4 that list if they were on the chronic sick list, if  
5 they were out injured, if they were on modified or  
6 restricted duty.

7 Q. And where or what documentation or where  
8 in the department, whether by order or within the  
9 regulations, does it say, if you are found to be in  
10 violation of the chronic sick policy that you will  
11 not be eligible for overtime?

12 A. It would in the chronic sick order, the  
13 policy and procedure.

14 Q. And, if you know, how long would you be  
15 denied the opportunity to perform overtime if you  
16 were on the chronic sick list?

17 A. I don't know.

18 Q. And did you, at some point in time, become  
19 aware of Officer Bovell being denied the opportunity  
20 to sign up for overtime?

21 A. No.

22 Q. Did you later hear that Officer Bovell had  
23 been denied the opportunity to work on the overtime  
24 detail for Con Ed or any other overtime detail?

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1           A.    I did learn that he was told he was not --  
2   or it was said he was not allowed to work Con  
3   Edison.

4           Q.    And who did you hear that from?

5           A.    I believe, the first person I heard it  
6   from was Greg Addison.

7           Q.    And if an individual was denied the  
8   ability to work overtime, is that something that  
9   would be marked in the computer system?

10          A.    It would be marked on the overtime --  
11   excuse me -- the overtime list itself. There's a  
12   comment section, for lack of a better term, where it  
13   would have indicated if the person wasn't to be  
14   hired for a certain overtime.

15          Q.    And who would be in charge of putting that  
16   comment in on the list?

17          A.    Someone in the patrol division.

18          Q.    Anybody has access to an authorization in  
19   the patrol division to make that notation?

20          A.    I'm sorry. One of the supervisors in the  
21   patrol division.

22          Q.    Like yourself?

23          A.    No, ma'am.

24          Q.    Who?

1           A.     Patrol division office. The captain or  
2 the deputy chief, or if there was a lieutenant in  
3 there at the time.

4           Q.     So Hastings or Dumser?

5           A.     Would have to make the decision, yes.

6           Q.     And did you ever come to learn who, if  
7 anyone, made a notation that Officer Bovell was to  
8 be marked, do not hire for Con Ed?

9           A.     I never inquired as to who made the  
10 decision.

11          Q.     Did you ever hear who made the decision?

12          A.     No, ma'am.

13          Q.     I'm going to show you what's been marked  
14 as Plaintiff's Exhibit 18, chronic absence control  
15 regulation. And can you just point out for me where  
16 it indicates that an individual would not be  
17 eligible for overtime if they violated that policy?

18          A.     It would be on page 2, section 3, sub D.

19          Q.     And what does that say?

20          A.     "Ineligible for voluntary overtime."

21          Q.     What's the heading on that section?

22          A.     "Procedures."

23          Q.     Is there more of a sentence than,  
24 ineligible for overtime?

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1 A. Not in subsection D.

2 Q. Can I take a look. Thanks. Okay. So  
3 under subsection 3, can you just read the beginning  
4 of that section.

5 A. "After meeting with the commissioner or,  
6 if no meeting was requested, the member may have any  
7 or all of the following applied to him, her, at sole  
8 discretion of the commissioner, for so long as he,  
9 she, is designated as a chronic absentee."

10 Q. And subsection D is --

11 A. "Ineligible for voluntary overtime."

12 Q. Okay. And I'm going to show you what was  
13 marked before as Plaintiff's Exhibit 20, if you can  
14 just read what's under, "Office of the Chief of  
15 Department," down to the bullet section?

16 A. "The above caption report and supporting  
17 documentation have been reviewed. I concur with the  
18 findings and recommendations. Upon approval, unless  
19 otherwise noted by the deputy commissioner of police  
20 or police commissioner, PO Bovell has been counseled  
21 by his immediate supervisor, supervisor to monitor  
22 Bovell's sick usage, original, file with SSD."

23 Q. And is there anything on that document  
24 that indicates that he is going to be ineligible for

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1 overtime off?

2 A. No.

3 Q. And aside from the chronic sick  
4 investigation that you did in 2014, were you aware  
5 of any other accusations that Officer Bovell was  
6 chronically sick or in violation of the sick policy  
7 in 2014?

8 A. No, ma'am.

9 Q. Did you ever make a recommendation that  
10 Officer Bovell be placed on the ineligible list for  
11 overtime?

12 A. No.

13 Q. I will show you what's been marked as  
14 Plaintiff's Exhibit 26. Do you recognize that  
15 document?

16 A. Never seen this before.

17 Q. Okay. In looking at the substance of  
18 what's written on that document, do you recall  
19 learning any of that information through another  
20 source other than that document?

21 MR. SWEENEY: Objection to the form of the  
22 question, but you can answer it if you  
23 understand it.

24 A. I'm sorry. Can you repeat the question.

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1 I was reading.

2 Q. Sure. Do you need some more time to look  
3 at it?

4 A. No.

5 Q. Okay. So the information -- withdrawn.  
6 What type of information is contained on  
7 that form, if you know?

8 A. Name, charge, shield numbers for the  
9 officers, date, and incident number.

10 Q. Okay. And with respect to the information  
11 contained on that document, other than seeing it  
12 here, apparently for the first time, do you recall  
13 seeing that information on the chart that was  
14 provided to you by Lisa Hill in the fall of 2014?

15 A. No. The chart Lisa Hill provided me just  
16 had numbers. Didn't have names. Just a number of  
17 how many arrests were made or how many tickets were  
18 issued.

19 Q. And in November of 2014, did you place a  
20 phone call to Officer Bovell or did -- withdrawn.

21 Did you have a conversation over the phone  
22 with Officer Bovell in connection with the initial  
23 evaluation that you had drafted for him?

24 A. Yes, ma'am.

1 Q. And what was the substance of that  
2 conversation?

3 A. I advised Police Officer Bovell that  
4 the -- there was an error with the numbers that were  
5 provided to me. I explained to him that, upon  
6 looking into it, realized that there was a  
7 significant discrepancy in his arrest reports or  
8 arrest reporting and that I was drafting a secondary  
9 or supplemental evaluation to document that.

10 Q. And did you go over Officer Bovell's  
11 supplemental or amended evaluation with him?

12 A. No, ma'am.

13 Q. And why is that?

14 A. Because, until Friday, I hadn't seen him.

15 Q. At that point in time, Officer Bovell was  
16 out injured?

17 A. Yes, ma'am.

18 Q. Could you have gone over Officer Bovell's  
19 amended evaluation form with him over the phone?

20 A. I could have, yes.

21 Q. And why didn't you?

22 A. To the best of my recollection, Officer  
23 Bovell, when I was on the phone with him, stated  
24 that he had just come back from physical therapy and



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1 had taken medication and didn't wish to speak.

2 Q. Okay. Did you schedule another phone call  
3 to go over his amended evaluation with him?

4 A. No, I did not.

5 Q. Why not?

6 A. I don't recall if it was -- I guess it  
7 would have been in that conversation. But at that  
8 point, I believe there was a -- I had been advised  
9 of a lawsuit. And either Bovell stated that he  
10 didn't want to speak about it without his attorney  
11 or I was advised not to speak about it until further  
12 legal action was taken.

13 Q. And you found out that there was a lawsuit  
14 filed prior to creation of the amended evaluation;  
15 correct?

16 A. I believe so, yes.

17 Q. And when you made the request of Lisa Hill  
18 for the quarterly statistics in the fall of 2014,  
19 was that the only information that you were seeking  
20 from Lisa Hill?

21 A. I'm confused by your question. What  
22 information?

23 Q. You were seeking quarterly statistics from  
24 Lisa Hill in the fall of 2014 for the individuals

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1 that you supervised?

2 A. Yes.

3 MR. SWEENEY: Objection.

4 Q. You did testify about that earlier;  
5 correct?

6 A. I'm not sure if you were asking -- if I  
7 was asking just for Police Officer Bovell's or if I  
8 was --

9 Q. No. Okay. So it was a quarterly report  
10 for all the individuals that you supervised; right?

11 A. Yes.

12 Q. Okay. And if asked under oath, would  
13 you -- withdrawn.

14 Was there any other information that you  
15 were seeking from Lisa Hill other than the quarterly  
16 statistics --

17 A. No, ma'am.

18 Q. -- in the fall of 2014?

19 A. I misspoke. Yes. I was still trying to  
20 get an answer as to why the numbers were so  
21 different.

22 Q. And to this date, do you have any  
23 knowledge as to why the numbers were different?

24 A. No, ma'am.

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1 Q. And when is the last time you inquired of  
2 Ms. Hill of why the numbers would have been so  
3 different?

4 A. I haven't inquired in quite some time,  
5 ma'am.

6 Q. Is she the only individual that works in  
7 that department?

8 A. No, ma'am.

9 Q. Is she the head of the department?

10 A. No, ma'am.

11 Q. Did you speak to anybody else in that  
12 department about why the numbers would be so  
13 different between the spring of 2014 and the fall?

14 A. Yes, ma'am.

15 Q. And who did you speak to?

16 A. Lieutenant Ziadie and Sergeant McEachin.

17 Q. And they said, ask Lisa Hill?

18 A. Yes, ma'am.

19 Q. Other than those three individuals, is  
20 there anyone else who works in that department?

21 A. Yes, ma'am.

22 Q. Who else?

23 A. There's several civilians that work in  
24 that department doing various tasks. The technology

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1 services officers work out of there. The property  
2 clerk works out of there. The vehicle removal unit  
3 works out of there. Training unit works out of  
4 there.

5 Q. Technology services?

6 A. Yes, ma'am.

7 Q. And those are individuals who work on the  
8 computers or who deal with computers in the  
9 department?

10 A. Computers, radios, cameras.

11 Q. The AS400 system?

12 A. I don't know if they do that.

13 Q. Did you ask any of the technology people  
14 why the information would be so different between  
15 the fall and the spring of 2014?

16 A. No.

17 Q. Why not?

18 A. Because when the commanding officer of  
19 that unit told me to speak to Lisa Hill, that's what  
20 I did.

21 Q. And when you didn't receive an answer, you  
22 stopped?

23 A. No. That's when I went to the sergeant  
24 and asked the sergeant if he could answer it.

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1 Q. And he said?

2 A. You have to ask Lisa Hill. He has no  
3 idea.

4 Q. So they both directed you to Lisa Hill;  
5 correct?

6 A. Yes, ma'am.

7 Q. And she had no idea?

8 A. Yes, ma'am.

9 Q. And you didn't inquire to anybody else as  
10 to why there would be such a discrepancy?

11 A. No.

12 Q. Why not?

13 A. Because if the commanding officer and  
14 executive officer directed me to the same person,  
15 since they were on that division, I would assume  
16 they know who would have the correct answer. When  
17 that person couldn't give me an answer, I stopped  
18 asking.

19 Q. Did you go back to those two supervisors  
20 to let them know that Lisa Hill had no idea why the  
21 numbers would be different?

22 A. Yes, ma'am.

23 Q. And what was their response?

24 A. Okay.

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1 MS. BELLANTONI: I don't believe I have  
2 anything further. You want to just take a  
3 couple minutes.  
4

5 (Recess taken.)  
6

7 (Plaintiff's Exhibit 34, MV5, was marked  
8 for identification.)  
9

10 (Plaintiff's Exhibit 35, COMPENSATORY TIME  
11 REQUEST, was marked for identification.)  
12

13 BY MS. BELLANTONI:

14 Q. I'm showing you what's been marked as  
15 Plaintiff's Exhibit 34, which is Bates stamped 0155  
16 and 0166. Do you recognize that document?

17 A. This is the MV5 that was submitted by  
18 Police Officer Bovell.

19 Q. And is that the MV5 that you were speaking  
20 of when you were referring to him mentioning your  
21 name in connection with his request for time off or  
22 having called out sick?

23 A. Yes, ma'am.

24 Q. And when was that MV5 drafted or created?

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1 Is there a date on it?

2 A. March 29, 2014.

3 Q. And that is the MV5, just to be clear,  
4 that you took into consideration when rating Officer  
5 Bovell's -- rating Officer Bovell in the category of  
6 attitude on his evaluations?

7 A. That's what I was indicating, yes.

8 Q. Okay. And I will take that back. And I  
9 will show you what's been marked as Plaintiff's  
10 Exhibit 35. Do you recognize that document?

11 A. I know what the document is, yes.

12 Q. Okay. And what is that document?

13 A. It's a request for time off.

14 Q. What's the Bates stamp number at the  
15 bottom, just for the record?

16 A. What's a Bates stamp?

17 Q. What's the number -- numbers all the way  
18 down at the bottom?

19 A. Bovell dot 00157.

20 Q. Thank you. And when is that request for  
21 sick time or request for comp time dated?

22 A. It's either March 15th or March 13th. I  
23 don't know what that number is at the top.

24 Q. Of 2014?

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1 A. Yes, ma'am.

2 Q. Is that request for officer -- submitted  
3 by Officer Bovell?

4 A. Yes, ma'am.

5 Q. And were you part of the decision-making  
6 process in the denial of that request?

7 A. No, ma'am.

8 Q. Okay. And to your knowledge, who made the  
9 decision to deny his request for comp time?

10 A. Looks like Captain Hastings' signature.

11 Q. And is there an area on that document for  
12 a reason why the request would be denied?

13 A. Yes, ma'am.

14 Q. And what is the reason?

15 A. Short roll call. No other FTL.

16 MS. BELLANTONI: I will take that back.

17 And I have nothing further.

18

19 (Time noted: 11:40 a.m.)

20

21

22

23

24



1 STATE OF NEW YORK )

2 SS:

3 COUNTY OF )

4  
5  
6 I, ROBERT WUTTKE, hereby certify that I have  
7 read the pages of the foregoing testimony of this  
8 deposition and hereby certify it to be a true and  
9 correct record.  
10

11  
12  
13  
14 -----  
15 ROBERT WUTTKE  
16  
17  
18

19 Sworn to before me this  
20 \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

21  
22  
23 \_\_\_\_\_  
24 Notary Public

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I N D E X

CONTINUED EXAMINATION

PAGE:LINE

BY MS. BELLANTONI:

190:8

Plaintiff's Exhibit 34,

MV5,

was marked for identification:

254:7

Plaintiff's Exhibit 35,

COMPENSATORY TIME REQUEST,

was marked for identification:

254:10

(EXHIBITS RETAINED BY AMY L. BELLANTONI, ESQ.)

## C E R T I F I C A T I O N

STATE OF NEW YORK )  
 ) ss.  
COUNTY OF WESTCHESTER )

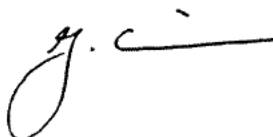
I, GABRIEL ALICEA, Court Reporter and  
Notary Public within and for the County of Rockland,  
State of New York, do hereby certify:

That I reported the proceedings that are  
hereinbefore set forth, and that such transcript is  
a true and accurate record of said proceedings.

I further certify that the witness does  
not request to review the transcript;

AND, I further certify that I am not  
related to any of the parties to this action by  
blood or marriage, and that I am in no way  
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my  
hand.



GABRIEL ALICEA

Court Reporter



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